Supreme Court, U.S.
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No. 92-478

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1992

ARIZONA HISPANIC COMMUNITY FORUM,

Appellant,

v.

J. FIFE SYMINGTON, *et al.*,

Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

MOTION OF THE ARIZONA STATE SENATE TO DISMISS OR AFFIRM

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Pursuant to Rule 16.1, appellee the Arizona State Senate moves to dismiss or affirm the appeal filed on behalf of the Arizona Hispanic Community Forum. The motion is grounded on the fact that the order under review is a special order of the three-judge district court permitting the 1992 Arizona legislative election to go forward on the basis of a district plan adopted by the Arizona Legislature which had not yet been considered by the Department of Justice. The district court fairly concluded that in

view of the lateness of the date (June 1992), it was necessary and appropriate to accept the legislative plan so that the 1992 election could go forward; and, no stay having been sought in this Court, it is surely too late to deal with this matter now.[1]

This Court has jurisdiction under 28 U.S.C. § 1253 and the substantive statute is Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

REASONS FOR DISMISSING OR AFFIRMING THE APPEAL

This appeal should be dismissed or affirmed. The order under challenge on this appeal is carefully restricted to the November 3, 1992 election. That election will have occurred before this Court could reasonably take any action on this appeal. It is familiar doctrine that where the challenge to a redistricting plan comes too late in terms of the election cycle, the election may go forward. *Ely v. Klahr*, 403 U.S. 108, 91 S. Ct. 1803, 29 L. Ed. 2d 352 (1971), a virtually identical Arizona situation of 20 years ago; *Upham v. Seamon*, 456 U.S. 37, 102 S. Ct. 1518, 71 L. Ed. 2d 725 (1982); and *Terrazas v. Clements*, 456 U.S. 902, 102 S. Ct. 1745, 72 L. Ed. 2d 158 (1982).

We do not disparage the substantiality of the underlying problem that the Department of Justice has not approved the legislative redistricting plan passed by the Arizona Legislature. But at

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[1] Two separate matters arose from the three-judge district court's action. Because the Arizona Legislature had not adopted a congressional reapportionment plan, this Court ordered a reapportionment. The congressional matter has been appealed here, Nos. 92-362 and 92-375, matters scheduled for the October 30 conference of this Court. The Legislature did adopt a legislative redistricting plan and it is that matter which gives rise to the instant case.

this late date, those problems can only be resolved in terms of the 1994 and subsequent elections. All the order appealed from did was to provide that on an emergency basis the 1992 election could be conducted under the legislative plan adopted. On the facts and under the controlling authority, this appeal as to the 1992 election (all that is before the Court) should either be dismissed as moot or affirmed because of the want of a substantial federal question. The jurisdiction of the district court will revive when the matters identified in the footnote are disposed of.

Respectfully submitted,

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